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) Case No. CV 15-02511 DDP (JPRx)
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) **ORDER DENYING MOTIONS FOR STAY**
) **AND SUMMARY JUDGMENT**
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) **[Dkt nos. 22, 25]**
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ORDER DENYING MOTIONS FOR STAY
AND SUMMARY JUDGMENT

[Dkt nos. 22, 25]

Defendants.

I. Background

¹ The instant motions were filed prior to the stipulated filing of the First Amended Complaint.

1 packaging that mislead Plaintiff and other consumers to believe
2 that the berries were grown in the Himalayas. (Id. ¶ 9.)

3 Plaintiff alleges that the berries were grown in Ningxia,
4 China, rather than the Himalayas. (Id. 5.) Plaintiff alleges that
5 Himalania packing suggested that the berries were grown in the
6 Himalayas because the Himalania trademark includes mountain range
7 imagery and part of the package is shaped like a mountain range.
8 (Id. ¶ 9.) Plaintiff also notes that the package includes the
9 statements "Goji berry, the most famous berry in the Himalayas,"
10 and "Goji berries originate in the high plateaus of the Himalayan
11 Mountains." (Id.) Defendants no longer advertise goji berries
12 using the statements described above. (Decl. Cullin Avram O'Brien,
13 Dkt. 28 at Exs. 1, 3-5.)

14 Plaintiff seeks to certify a class of "all California
15 purchasers of Himalania brand goji berries." (Compl. ¶ 12.)
16 Plaintiff alleges that Defendants' packaging statements violated
17 the California unfair competition law and Consumer Legal Remedies
18 Act. (Id. ¶¶ 22, 32.) Plaintiff seeks declaratory and injunctive
19 relief, damages, disgorgement, and restitution. Defendants now
20 move for a stay of all proceedings pending the Ninth Circuit's
21 decision in Jones v. Conagra Foods, Inc., No. 14-16327, which has
22 been fully briefed, although an argument date has not yet been set.

23 **II. Discussion**

24 Defendants argue that this case should be stayed because the
25 Ninth Circuit's decision in Jones will address issues central to
26 class certification questions in this case. (Mot. at 4). Absent a
27 stay, defendants contend, both parties will be required to engage
28

1 in burdensome discovery and class certification briefing that may,
2 depending on the Jones decision, prove to be needless or misguided.

3 "[T]he power to stay proceedings is incidental to the power
4 inherent in every court to control the disposition of the causes on
5 its docket with economy of time and effort for itself, for counsel
6 and for litigants. How this can best be done calls for the
7 exercise of judgment, which must weigh competing interests and
8 maintain an even balance." Landis v. North American Co., 299 U.S.
9 248, 254-255 (1936); Leyva v. Certified Grocers of California,
10 Inc., 593 F.2d 857, 863 (9th Cir. 1979); Lockyer v. Mirant Corp.,
11 398 F.3d 1098, 1110 (9th Cir. 2005). Relevant factors include
12 Where a stay may prejudice the opposing party, the party seeking a
13 stay must show that the denial of a stay will result in some
14 hardship. Landis, 299 U.S. at 255; Dependable Highway Exp., Inc.
15 v. Navigators Ins. Co., 498 F.3d 1059, 1066 (9th Cir. 2007).

16 Plaintiff contends that a stay would severely prejudice him by
17 preventing him from "address[ing] Defendants' changes to their
18 marketing and advertising campaign through discovery"
19 (Opposition at 2.) Although the thrust of this argument is not
20 clear to the court, the court is nevertheless not persuaded that a
21 stay is warranted. The Plaintiff/Appellant in Jones primarily
22 challenges the district court's denial of class certification for
23 lack of an ascertainable class or damages theory, and because of
24 the predominance of individualized questions. Unlike the present
25 case, however, Jones involves numerous products, including seven
26 segments of tomato products, cooking sprays, and multiple varieties
27 of hot cocoa products. Jones v. ConAgra Foods, Inc., No. C 12-1633
28 CRB, 2014 WL 2702726 at *1-3 (N.D. Cal. June 13, 2014). Indeed,

1 the variety of products at issue was a significant reason
2 underlying the district court's decision to deny class
3 certification. Id. at 10-12.

4 It is quite possible, therefore, that the Ninth Circuit's
5 decision in Jones will have little bearing on the instant case.
6 Even assuming that the Ninth Circuit issues a precedential opinion
7 in Jones, the holding may well be limited to cases involving a wide
8 variety of allegedly mislabeled products or particularly deficient
9 showings of materiality and consumer reliance. Such an opinion
10 would not be particularly instructive in this case. Although
11 Defendants are correct that the Ninth Circuit might conceivably
12 issue a ruling that would affect this case, the chances of such an
13 outcome are too speculative at this stage to warrant stay of the
14 instant proceedings.

15 Accordingly, Defendants' Motion to Stay is DENIED.
16 Plaintiff's Motion for Summary Judgment is also DENIED, without
17 prejudice.²

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20 IT IS SO ORDERED.

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23 Dated: October 22, 2015



24 DEAN D. PREGERSON
25 United States District Judge

26 ² The meaning of Plaintiff's request for summary judgment
27 "codifying the issue" that Defendants have changed an advertising
28 filed a First Amended Complaint subsequent to the filing of his
motion.